

Sifodec Corp. v Carnegie Hall Corp.

2018 NY Slip Op 31266(U)

June 11, 2018

Supreme Court, New York County

Docket Number: 657118/2017

Judge: David B. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. DAVID BENJAMIN COHEN
Justice

PART 58

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SIFODEC CORPORATION
JEAN DAVID SIMON,

INDEX NO. 657118/2017

Plaintiff,

MOTION DATE 02/13/18

- v -

MOTION SEQ. NO. 001

THE CARNEGIE HALL CORPORATION

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document numbers 6, 7, 8, 9, 10, 11, 12, 13, 14 were read on this application to/for Judgment – Motion to Dismiss.

Upon the foregoing documents, it is

Plaintiff Sifodec Corporation and defendant entered into an agreement whereby defendant provided to plaintiff space for a concert at the defendant’s facility. The Complaint alleges that defendant breached each and every term of the contract by (1) giving away 237 tickets that should have been sold for \$50 to \$125 each; (2) failing to properly promote and advertise the event; (3) failing to provide proper access to the event; (4) submitting an inflated and inaccurate invoice; and (5) submitting a knowingly inaccurate Press List. Defendant filed the instant motion to dismiss under CPLR 3211(a)(7) asserting that plaintiff failed to state a cause of action for breach of contract.

When deciding a motion to dismiss pursuant to CPLR §3211, the court should give the pleading a “liberal construction, accept the facts alleged in the complaint to be true and afford

the plaintiff the benefit of every possible favorable inference” (*Landon v. Kroll Laboratory Specialists, Inc.*, 22 NY3d 1, 5-6 [2013]; *Faison v. Lewis*, 25 NY3d 220 [2015]). However, if a complaint fails within its four corners to allege the necessary elements of a cause of action, the claim must be dismissed (*Andre Strishak & Associates, P.C. v. Hewlett Packard & Co.*, 300 AD2d 608 [2d Dept 2002]). Under CPLR § 3211(a)(7), the court “accepts as true the facts as alleged in the complaint and affidavits in opposition to the motion, accords the plaintiff the benefit of every possible favorable inference, and determines only whether the facts as alleged manifest any cognizable legal theory” (*Elmaliach v Bank of China Ltd.*, 110 AD3d 192, 199 [1st Dept 2013] (quoting *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001])). Under New York law, “[t]he elements of a cause of action for breach of contract are (1) formation of a contract between plaintiff and defendant, (2) performance by plaintiff, (3) defendant's failure to perform, (4) resulting damage” (*Morris v 702 E. Fifth St. HDFC*, 46 AD3d 478 [1st Dept 2007]). “In order to state a cause of action to recover damages for a breach of contract, the plaintiff's allegations must identify the provisions of the contract that were breached” (*Reznick v Bluegreen Resorts Mgt., Inc.*, 154 AD3d 891, 893 [2d Dept 2017]).

First, claims 1, 2, and 5 are plainly refuted by a simple reading of the agreement which specifically reserves certain ticketing rights to defendant, does not require defendant to promote (an in fact contemplates plaintiff promotion) and the press release clearly states that it is inaccurate and for the convenience of defendant. Thus, the claims are dismissed. Further, the Complaint does not allege which provisions of the agreement required defendant to perform the claimed obligations and is also dismissed.

The motion to dismiss the third and fourth claims of improper access and inflated bill is also granted. For a motion to dismiss pursuant to CPLR 3211(a)(7), a court must give the

allegations every favorable inference and the facts pleaded must be presumed true. However, “bare legal conclusions are not entitled to the benefit of the presumption of truth and are not accorded every favorable inference” (*Ruffino v New York City Tr. Auth.*, 55 AD3d 817, 818 [2d Dept 2008]). Here, the Complaint does not allege any facts as to what occurred at the time of the rental. The Complaint simply concludes that defendant breached the parties’ agreement by not providing access and submitting an inflated bill. The Complaint does not allege that the event did not occur, or that people could not enter the premises or that not enough entrances were open (although there is no contractual provision regarding). The Complaint only states that there was not *proper* access. Similarly, the agreement provides for a base price and additional costs for services used to be determined later. The Complaint does not articulate which part of the invoice was inflated, does not dispute the services contained in the invoice, nor dispute the personnel used by defendant. In fact, plaintiff paid a large portion of the billed amount just a few days prior to the event, and the invoice submitted by plaintiff as an exhibit to the Complaint shows that plaintiff made another payment a year after the event.

“Vague and indefinite” assertions are not sufficient to plead a breach of contract cause of action (*Canzona v Atanasio*, 118 AD3d 837, 839 [2d Dept 2014]). Here, this Complaint contains no facts from which defendant, or this Court, can draw any inferences. The Complaint does not provide any ‘factual allegations ... which taken together manifest any cause of action cognizable at law’ ” (*Sheila C. v Povich*, 11 AD3d 120, 122 [1st Dept 2004]). It does not provide any facts which inform defendant or the Court of what is being complained of and why. The reader is simply left to guess.

Finally, defendant’s motion to dismiss the complaint as to Jean David Simon individually is granted. The parties to the agreement were Sifodec Corporation and The Carnegie Hall

Corporation. There is no indication that Simon ever was involved in his individual capacity and the fact that he signed the agreement on behalf of Sifodec does not make him a party to the agreement. Accordingly, it is therefore

ORDERED that the motion to dismiss the Complaint is granted in its entirety.

This constitutes the decision and order on the Court.

06/11/18

DATE



DAVID BENJAMIN COHEN, J.S.C.

**HON. DAVID B. COHEN
J.S.C.**

CHECK ONE:

CASE DISPOSED
GRANTED
SETTLE ORDER
DO NOT POST

DENIED

NON-FINAL DISPOSITION
GRANTED IN PART
SUBMIT ORDER
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: